CALIFORNIA STATE BOARD OF EQUALIZATION

CURRENT LEGAL DIGEST NO. 1069

July 12, 2005

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Delete Annotation 170.1850, **Personal Liability of Corporate Officer** (10/23/95), because the conclusion is inaccurate.

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175.0018 **Collection of Use Tax by California Department of Corrections (CDC) and/or California Training Facility (CTF).**

When an inmate of the CDC or CTF orders tangible personal property via a catalog from an out-of-state retailer and has the property shipped to California, the sale does not occur in California and sales tax does not apply. However, the transaction is subject to use tax because the tangible personal property is being purchased for storage, use, or other consumption in California.

If the out-of-state retailer collects the use tax from the inmate, the inmate's use tax liability is satisfied. If the out-of-state retailer does not collect the use tax from the inmate, the inmate must pay the use tax to the State of California. Since CDC and CTF are instrumentalities of the State of California, they can legally facilitate the inmate's payment of his or her use tax liability to the State of California. Therefore, it is appropriate for CDC and CTF to collect an inmate's use tax and remit such tax to the Board of Equalization where the inmate has not paid such tax to its retailer. 2/17/05. (200X-X).

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Delete Annotation 190.2205, **Slips, Floats and Ramps** (8/9/50), because it has been superceded by annotation 190.0080.

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245.1093 Thickened Juices. These products are described as specially formulated to assist health care operators with the dietary management of residents with dysphagia. The smooth consistency ensures a safe swallow. These products also come in pre-packaged containers that do not require refrigeration until opened for serving. They come in 46-ounce bulk packages and 4-ounce individual sealed cups. The pictures of the products indicate that they contain 100 percent fruit juice, and the flyers state that the juices provide 100 percent of the minimum daily RDA of Vitamin C.

Note: The new proposed annotations contained in this CLD are drafts and may not accurately reflect the text of the final annotation.

Though the products are given to persons with a medical problem, they are given to deal with the patients' nutritional needs. Foods and medicines are mutually exclusive categories with different requirements for exemption from tax. (Reg. 1602(a)(4).) For that reason, we apply the rules regarding the taxation of food products rather than the sales of medicines to the sales of these products. Thus, under the criteria set forth in Regulation 1602(a)(2) and (a)(5), the thickened juices and beverages qualify as food products the sale of which is not subject to tax. 1/21/05. (2005-3).

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295.1237 **E-Waste Recycling Fee.** Revenue and Taxation Code Section 6012(a)(2) provides that taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of the materials used, labor or service cost, or any other expense of the retailer passed on to the customer.

The e-waste recycling fee is imposed on the purchasers of covered electronic devices, not on the retailers who sell these items. When retailers separately state the e-waste recycling fee on the receipts they issue to their customers, the retailers are not passing on expenses to the purchaser but are instead collecting the fee from the purchaser as required by statute. Therefore, the e-waste recycling fee is not included in gross receipts. 2/24/05. (200X-X).

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305.0028.600 **Purchase of a Vehicle – Use Tax Collection Responsibility.** When an off-reservation vehicle dealer, using its own facilities, delivers a vehicle on a reservation to an Indian purchaser who does not reside on a reservation, the dealer is obligated to collect use tax from the Indian purchaser and remit the tax to the Board of Equalization (Board). The obligation of the vehicle dealer to collect and remit use tax also applies when, using its own facilities, an off-reservation dealer delivers a commercial vehicle (e.g., a semi-trailer truck which cannot reasonably be used on a reservation more than it used off the reservation during the 12 months after delivery to the purchaser) on a reservation to an Indian purchaser who resides on a reservation. In both of these instances, if the Indian purchaser can subsequently establish that he or she used the vehicle on a reservation one half or more of the time during the first 12 months following delivery, he or she may apply to the Board for a refund of the use tax.

However, when an off-reservation dealer, using its own facilities, delivers a vehicle to be used for personal purposes to an Indian purchaser who resides on a reservation, the dealer is not obligated to collect and remit use tax. In this situation, if the Indian purchaser uses the vehicle off the reservation more than one half the time during the first 12 months after delivery, it is the responsibility of the Indian purchaser to remit use tax to the Board. 2/16/05. (200X-X).

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320.0215 **Relief of Interest – Section 6593.5.** Section 6593.5(a) was amended effective January 1, 2002, to substitute "this part" for "Sections 6480.4, 6480.8, 6513, 6591 and 6592.5." This amendment allows the Board to grant relief of interest imposed under section 6482 for audit determinations that contain tax liabilities for reporting periods commencing on or after July 1, 1999

In November 2001, a taxpayer filed a request for relief of interest that accrued from November 1, 1999 to June 30, 2001 for a determination covering the third quarter of 1999. Prior to the January 1, 2002, effective date of the amendment, the Board did not have the authority to grant the relief, and the request was denied.

Although the taxpayer's initial request for relief was denied, the amendment to section 6593.5 does not preclude a qualifying taxpayer from resubmitting a request for the same period and obtaining relief. 2/16/05. (200X-X).

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Revise annotation 545.0019, **Hospital Charges to Patients.** Charges to patients for items of tangible personal property which either are not ''administered'' or for which a separate administration charge is made constitute retail sales. This is the case whether the payments made are based on the specific amount of service or quantity of property provided or a ''flat rate'' based on a pre-approved schedule of services (e.g., a per capita rate, a per diem rate, etc.).

In instances where the hospital provides administration of property and no separate charge is made, the hospital is the consumer.

If the hospital maintains a tax-paid inventory, a tax-paid purchases resold deduction is allowable in cases where the hospital makes a separate charge for nonadministered items or makes a separate charge for administration of administered items.

In those instances where billings to insurance companies are subject to a ''contract allowance'' whereby it is understood that the amount paid will be less than the amount billed, the unpaid amount is a discount to be taken at the time of the transaction, not a bad debt to be taken later. 5/23/88. (Am. 2005-X).

(Note: Changes to Regulation 1503, effective June 1, 2001, replaced the "administered vs. nonadministered" concept with the new procedures specified in subdivision (b)(2).)

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Delete Annotation 550.0150, **Open Lobby Policy** (12/11/01; 6/24/02) because it conflicts with the Board's Memorandum Opinion in Century Theaters, Inc.

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700.0150 **Increases in City Sales Tax Rates.** The increase of a city's Bradley-Burns Uniform Local Sales and Use Tax rate pursuant to a "revenue sharing" agreement with the county is not a tax "increase" requiring voter approval under Proposition 218. The county ordinance sets the local tax rate at 1.25 percent. Under a revenue sharing agreement between a city and the county, the city local tax ordinance operates as a revenue adjustment rather than as a tax-levying ordinance. As the city rate offsets the county rate, the overall Bradley-Burns Uniform Local Sales and Use Tax rate remains the same. Consequently, in the event a city's tax-rate agreement with its county provides for an increase in its local tax rate in a particular year, that increase does not need to be approved by the voters. 2/16/05. (200X-X)

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